

108TH CONGRESS  
2D SESSION

# H. R. 4231

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2004

Received

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## AN ACT

To provide for a pilot program in the Department of Veterans Affairs to improve recruitment and retention of nurses, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Department of Vet-  
3 erans Affairs Nurse Recruitment and Retention Act of  
4 2004”.

5 **SEC. 2. PILOT PROGRAM TO STUDY INNOVATIVE RECRUIT-**  
6 **MENT TOOLS TO ADDRESS NURSING SHORT-**  
7 **AGES AT DEPARTMENT OF VETERANS AF-**  
8 **FAIRS HEALTH-CARE FACILITIES.**

9       (a) **PILOT.**—(1) Not later than 90 days after the date  
10 of the enactment of this Act, the Secretary of Veterans  
11 Affairs shall designate a health-care service region, or a  
12 section within such a region, in which health-care facilities  
13 of the Department of Veterans Affairs are adversely af-  
14 fected by a shortage of qualified nurses.

15       (2) The Secretary shall conduct a pilot program in  
16 the region or section designated under paragraph (1) to  
17 determine the effectiveness of the use of innovative  
18 human-capital tools and techniques in the recruitment of  
19 qualified nurses for positions at Department health-care  
20 facilities and for the retention of nurses at such facilities.  
21 In carrying out the pilot program, the Secretary shall  
22 enter into a contract with a private-sector entity for serv-  
23 ices under the pilot program for recruitment of qualified  
24 nurses.

25       (b) **PRIVATE-SECTOR RECRUITMENT PRACTICES.**—  
26 For purposes of the pilot program under this section, the

1 Secretary shall identify and use recruitment practices that  
2 have proven effective for placing qualified individuals in  
3 positions that are difficult to fill due to shortages of quali-  
4 fied individuals or other factors. Recruitment practices to  
5 be reviewed by the Secretary for use in the pilot program  
6 shall include—

7 (1) employer branding and interactive adver-  
8 tising strategies;

9 (2) Internet technologies and automated staff-  
10 ing systems; and

11 (3) the use of recruitment, advertising, and  
12 communication agencies.

13 (c) STREAMLINED HIRING PROCESS.—In carrying  
14 out the pilot program under this section, the Secretary  
15 shall, at health-care facilities of the Department in the re-  
16 gion or section in which the pilot program is conducted,  
17 revise procedures and systems for selecting and hiring  
18 qualified nurses to reduce the length of the hiring process.  
19 If the Secretary identifies measures to streamline and  
20 automate the hiring process that can only be implemented  
21 if authorized by law, the Secretary shall submit to the  
22 Committees on Veterans' Affairs of the Senate and House  
23 of Representatives recommendations for such changes in  
24 law as may be necessary to enable such measure to be  
25 implemented.

1 (d) REPORT.—Not later than one year after the date  
2 of the enactment of this Act, the Secretary shall submit  
3 to the Committees on Veterans’ Affairs of the Senate and  
4 House of Representatives a report on the extent to which  
5 the pilot program achieved the goal of improving the re-  
6 cruitment and retention of nurses in Department of Vet-  
7 erans Affairs health-care facilities.

8 **SEC. 3. ALTERNATE WORK SCHEDULES FOR NURSES.**

9 (a) ENHANCED SHIFT FLEXIBILITY.—Chapter 74 of  
10 title 38, United States Code, is amended by inserting after  
11 section 7456 the following new section:

12 **“§ 7456a. Alternate work schedules**

13 “(a) APPLICABILITY.—This section applies to reg-  
14 istered nurses appointed under this chapter.

15 “(b) 36/40 WORK SCHEDULE.—(1) Subject to para-  
16 graph (2), if the Secretary determines it to be necessary  
17 in order to obtain or retain the services of registered  
18 nurses at a Department health-care facility, the Secretary  
19 may provide, in the case of registered nurses employed at  
20 that facility, that such a nurse who works three regularly  
21 scheduled 12-hour tours of duty within a workweek shall  
22 be considered for all purposes (except computation of full-  
23 time equivalent employees for the purposes of determining  
24 compliance with personnel ceilings) to have worked a full

1 40-hour basic workweek. Such a schedule may be referred  
2 to as a ‘36/40 work schedule’.

3 “(2)(A) Basic and additional pay for a registered  
4 nurse who is considered under paragraph (1) to have  
5 worked a full 40-hour basic workweek is subject to sub-  
6 paragraphs (B) and (C).

7 “(B) The hourly rate of basic pay for such a nurse  
8 for service performed as part of a regularly scheduled 36-  
9 hour tour of duty within the workweek shall be derived  
10 by dividing the nurse’s annual rate of basic pay by 1,872.

11 “(C)(i) Such a nurse who performs a period of service  
12 in excess of such nurse’s regularly scheduled 36-hour tour  
13 of duty within a workweek is entitled to overtime pay  
14 under section 7453(e) of this title, or other applicable law,  
15 for officially ordered or approved service performed in ex-  
16 cess of—

17 “(I) eight hours on a day other than a day on  
18 which such nurse’s regularly scheduled 12-hour tour  
19 falls;

20 “(II) 12 hours for any day included in the regu-  
21 larly scheduled 36-hour tour of duty; and

22 “(III) 40 hours during an administrative work-  
23 week.

24 “(ii) Except as provided in clause (i), a registered  
25 nurse to whom this subsection is applicable is not entitled

1 to additional pay under section 7453 of this title, or other  
2 applicable law, for any period included in a regularly  
3 scheduled 12-hour tour of duty.

4 “(3) A nurse who works a 36/40 work schedule de-  
5 scribed in this subsection who is absent on approved sick  
6 leave or annual leave during a regularly scheduled 12-hour  
7 tour of duty shall be charged for such leave at a rate of  
8 ten hours of leave for nine hours of absence.

9 “(c) 7/7 Work Schedule—(1) Subject to paragraph  
10 (2), if the Secretary determines it to be necessary in order  
11 to obtain or retain the services of registered nurses at a  
12 Department health-care facility, the Secretary may pro-  
13 vide, in the case of registered nurses employed at such  
14 facility, that such a nurse who works seven regularly  
15 scheduled 10-hour tours of duty, with seven days off duty,  
16 within a two-week pay period, shall be considered for all  
17 purposes (except computation of full-time equivalent em-  
18 ployees for the purposes of determining compliance with  
19 personnel ceilings) to have worked a full 80 hours for the  
20 pay period. Such a schedule may be referred to as a ‘7/  
21 7 work schedule’.

22 “(2)(A) Basic and additional pay for a registered  
23 nurse who is considered under paragraph (1) to have  
24 worked a full 80-hour pay period is subject to subpara-  
25 graphs (B) and (C).

1       “(B) The hourly rate of basic pay for such a nurse  
2 for service performed as part of a regularly scheduled 70-  
3 hour tour of duty within the pay period shall be derived  
4 by dividing the nurse’s annual rate of basic pay by 1,820.

5       “(C)(i) Such a nurse who performs a period of service  
6 in excess of such nurse’s regularly scheduled 70-hour tour  
7 of duty within a pay period is entitled to overtime pay  
8 under section 7453(e) of this title, or other applicable law,  
9 for officially ordered or approved service performed in ex-  
10 cess of—

11               “(I) eight hours on a day other than a day on  
12 which such nurse’s regularly scheduled 10-hour tour  
13 falls;

14               “(II) 10 hours for any day included in the regu-  
15 larly scheduled 70-hour tour of duty; and

16               “(III) 80 hours during a pay period.

17       “(ii) Except as provided in subparagraph (i), a reg-  
18 istered nurse to whom this subsection is applicable is not  
19 entitled to additional pay under section 7453 of this title,  
20 or other applicable law, for any period included in a regu-  
21 larly scheduled 10-hour tour of duty.

22       “(3) A nurse who works a 7/7 work schedule de-  
23 scribed in this subsection who is absent on approved sick  
24 leave or annual leave during a regularly scheduled 12-hour

1 tour of duty shall be charged for such leave at a rate of  
2 eight hours of leave for seven hours of absence.

3 “(d) 9-Month WORK SCHEDULE.—The Secretary  
4 may authorize a registered nurse appointed under section  
5 7405 of this title, with the nurse’s written consent, to  
6 work full-time for nine months with three months off duty,  
7 within a fiscal year, and be paid at 75 percent of the full-  
8 time rate for such nurse’s grade for each pay period of  
9 that fiscal year. A nurse working on such a schedule for  
10 any fiscal year shall be considered a  $\frac{3}{4}$  full-time equivalent  
11 employee for that fiscal year in computing full-time equiv-  
12 alent employees for the purposes of determining compli-  
13 ance with personnel ceilings. Service on such a schedule  
14 shall be considered to be part-time service for purposes  
15 of computing benefits under chapters 83 and 84 of title  
16 5.

17 “(e) REGULATIONS.—The Secretary shall prescribe  
18 regulations for the implementation of this section.”.

19 (b) CLERICAL AMENDMENT.—The table of sections  
20 at the beginning of chapter 74 of such title is amended  
21 by inserting after the item relating to section 7456 the  
22 following new item:

“7456a. Alternate work schedules.”.

1 **SEC. 4. TECHNICAL CORRECTION TO LISTING OF CERTAIN**  
2 **HYBRID POSITIONS IN VETERANS HEALTH**  
3 **ADMINISTRATION.**

4 Section 7401(3) of title 38, United States Code, is  
5 amended—

6 (1) by striking “and dental technologists” and  
7 inserting “technologists, dental hygienists, dental as-  
8 sistants”; and

9 (2) by striking “technicians, therapeutic  
10 radiologic technicians, and social workers” and in-  
11 serting “technologists, therapeutic radiologic tech-  
12 nologists, social workers, blind rehabilitation special-  
13 ists, and blind rehabilitation outpatient specialists”.

14 **SEC. 5. ASSISTANCE FOR HIRING AND RETENTION OF**  
15 **NURSES AT STATE VETERANS HOMES.**

16 (a) IN GENERAL.—(1) Chapter 17 of title 38, United  
17 States Code, is amended by inserting after section 1743  
18 the following new section:

19 **“§ 1744. Hiring and retention of nurses: payments to**  
20 **assist States**

21 “(a) PAYMENT PROGRAM.—The Secretary shall make  
22 payments to States under this section for the purpose of  
23 assisting State homes in the hiring and retention of nurses  
24 and the reduction of nursing shortages at State homes.

25 “(b) ELIGIBLE RECIPIENTS.—Payments to a State  
26 for a fiscal year under this section shall, subject to submis-

1 sion of an application, be made to any State that during  
2 that year—

3 “(1) receives per diem payments under this  
4 subchapter for that fiscal year; and

5 “(2) has in effect an employee incentive schol-  
6 arship program or other employee incentive program  
7 at a State home designed to promote the hiring and  
8 retention of nursing staff and to reduce nursing  
9 shortages at that home.

10 “(c) USE OF FUNDS RECEIVED.—A State may use  
11 an amount received under this section only to provide  
12 funds for a program described in subsection (b)(2). Any  
13 program shall meet such criteria as the Secretary may  
14 prescribe. In prescribing such criteria, the Secretary shall  
15 take into consideration the need for flexibility and innova-  
16 tion.

17 “(d) LIMITATIONS ON AMOUNT OF PAYMENT.—(1)  
18 A payment under this section may not be used to provide  
19 more than 50 percent of the costs for a fiscal year of the  
20 employee incentive scholarship or other incentive program  
21 for which the payment is made.

22 “(2) The amount of the payment to a State under  
23 this section for any fiscal year is, for each State home  
24 in that State with a program described in subsection  
25 (b)(2), the amount equal to 2 percent of the amount of

1 payments estimated to be made to that State, for that  
2 State home, under section 1741 of this title for that fiscal  
3 year.

4 “(e) APPLICATIONS.—A payment under this section  
5 for any fiscal year with respect to any State home may  
6 only be made based upon an application submitted by the  
7 State seeking the payment with respect to that State  
8 home. Any such application shall describe the nursing  
9 shortage at the State home and the employee incentive  
10 scholarship program or other incentive program described  
11 in subsection (c) for which the payment is sought.

12 “(f) SOURCE OF FUNDS.—Payments under this sec-  
13 tion shall be made from funds available for other pay-  
14 ments under this subchapter.

15 “(g) DISBURSEMENT.—Payments under this section  
16 to a State home shall be made as part of the disbursement  
17 of payments under section 1741 of this title with respect  
18 to that State home.

19 “(h) USE OF CERTAIN RECEIPTS.—The Secretary  
20 shall require as a condition of any payment under this sec-  
21 tion that, in any case in which the State home receives  
22 a refund payment made by an employee in breach of the  
23 terms of an agreement for employee assistance that used  
24 funds provided under this section, the payment shall be

1 returned to the State home's incentive program account  
 2 and credited as a non-Federal funding source.

3       “(i) ANNUAL REPORT FROM PAYMENT RECIPI-  
 4 ENTS.—Any State home receiving a payment under this  
 5 section for any fiscal year, shall, as a condition of the pay-  
 6 ment, be required to agree to provide to the Secretary a  
 7 report setting forth in detail the use of funds received  
 8 through the payment, including a descriptive analysis of  
 9 how effective the incentive program has been on nurse  
 10 staffing in the State home during that fiscal year. The  
 11 report for any fiscal year shall be provided to the Sec-  
 12 retary within 60 days of the close of the fiscal year and  
 13 shall be subject to audit by the Secretary. Eligibility for  
 14 a payment under this section for any later fiscal year is  
 15 contingent upon the receipt by the Secretary of the annual  
 16 report under this subsection for the previous year in ac-  
 17 cordance with this subsection.

18       “(j) REGULATIONS.—The Secretary shall prescribe  
 19 regulations to carry out this section. The regulations shall  
 20 include the establishment of criteria for the award of pay-  
 21 ments under this section.”.

22       (2) The table of sections at the beginning of such  
 23 chapter is amended by inserting after section 1743 the  
 24 following new item:

“1744. Hiring and retention of nurses: payments to assist States.”.

1       (b) IMPLEMENTATION.—The Secretary of Veterans  
2       Affairs shall implement section 1744 of title 38, United  
3       States Code, as added by subsection (a), as expeditiously  
4       as possible. The Secretary shall establish such interim pro-  
5       cedures as necessary so as to ensure that payments are  
6       made to eligible States under that section commencing not  
7       later than January 1, 2005, notwithstanding that regula-  
8       tions under subsection (j) of that section may not have  
9       become final.

10   **SEC. 6. TECHNICAL CLARIFICATION.**

11       Section 8111(d)(2) of title 38, United States Code,  
12       is amended by inserting before the period at the end of  
13       the last sentence the following: “and shall be available for  
14       any purpose authorized by this section”.

15   **SEC. 7. UNDER SECRETARY FOR HEALTH.**

16       Section 305(a)(2) of title 38, United States Code, is  
17       amended—

18               (1) in the matter preceding subparagraph (A),  
19       by striking “shall be a doctor of medicine and”; and

- 1           (2) in subparagraph (A), by striking “and in  
2   health-care” and inserting “or in health-care”.

Passed the House of Representatives September 30,  
2004.

Attest:

JEFF TRANDAHL,

*Clerk.*